IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3669 OF 1993

1. Secretary, Shikshan Prasarak
Sanstha, Khanapur, Tal.Khanapur,
District Sangli

2. Principal,
Shri Sampatrao Mane Mahavidyalaya
Khanapur, Tal.Khanapur,
District Sangli. Petitioners

versus

1. Chandrakant Pandurang Kadam,
A & P. Chitoli, Tal.Khatav,
District Satara.

2. Presiding Officer,
School Tribunal, Pune Region,
Pune.

3. The State of Maharashtra Respondents

ALONG WITH
WRIT PETITION NO.3673 OF 1993

1. Secretary, Shikshan Prasarak
Sanstha, Khanapur, Tal.Khanapur,
District Sangli

2. Principal,
Shri Sampatrao Mane Mahavidyalaya
Khanapur, Tal.Khanapur,
District Sangli. Petitioners

versus

1. Bhalchandra Shrirang Gore,
A & P. Kalgun,
Tal.Khatav, Dist. Satara.

2. Presiding Officer,
School Tribunal, Pune Region,
Pune.

3. The State of Maharashtra Respondents

Mr.M.V.Limaye i/by Mr.R.S.Apte for petitioners
Ms.V.S.Mhaispurkar, AGP for R-3.
None for respondent no.1 though served.

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 06th November 2006

ORAL JUDGEMENT :

1. Since the common question of facts and law are involved in these petitions, they were heard together and are being disposed of by this common judgement.

2. Heard Shri Limaye for petitioners and Ms.Mhaispurkar for respondent no.3. None present for respondent no.1. Perused the records.

3. In both these petitions the petitioners challenge orders passed by the School Tribunal allowing appeals filed by the respondent no.1 in each of these petitions challenging the orders passed by the petitioners-Management terminating the services of the said respondents. The challenge to the impugned orders is three fold. Firstly that the School Tribunal has failed to take note of the fact that the respondent no.1

did not satisfy the educational qualification which was required for the purpose of appointment in the post of Teacher at the relevant time. Secondly, the Tribunal failed to take note of the fact that the posts, wherein the respondent no.1 in each of the petitions was appointed, were meant for reserved category candidates, while the said respondents belong to open category. Thirdly that after the termination of services of the said respondents new incumbents were appointed as the Teachers and yet they were not joined as the parties to the proceedings before the Tribunal. Inspite of the same, the Tribunal proceeded to pass the impugned order.

4. A perusal of the impugned order discloses that the Tribunal has upheld the contention of the respondents on the ground that those were permanent vacancies and wherein the respondents are to be held as appointed on permanent basis and merely because the orders issued by the petitioners disclose that they were temporarily appointed, it cannot take away the right accrued to the petitioners. Secondly that the petitioners did not produce any evidence to show that the posts were meant for reserved category candidates.

5. There is no dispute that the respondent no.1 in each of the petitions were initially appointed as part time teachers some time in the year 1987. They continued to be so appointed for more than two years. A perusal of the impugned order discloses that merely on account of the fact that the respondents continued to render services to the petitioner continuously for a period of more than two years, the Tribunal has persuaded to hold that they must be deemed to have been appointed as permanent employees by the management. Though it cannot be disputed that in case of availability of permanent vacancies, it would not be open for the management to appoint employees temporarily and at the sweet will of the management. The question as to whether in a given case the employees appointed on temporary basis or not, is a question of fact to be established on the basis of necessary evidence to be produced in that regard. Besides this, merely because a person continued to be in employment for more than two years, that itself cannot be sufficient to hold the post to be a permanent post. The subject which is being taught, number of students in the class, are some of the important factors which are relevant for deciding

about availability of the permanent vacancy in the school or the institution. Whether it is permanent vacancy or not is to be established by the person contending that his appointment should be deemed to have been made against permanent vacancy. In such a case it would be necessary for such applicant/complainant to establish as to at what point of time the post which the candidate was allowed to occupy, became permanent vacancy and whether he was appointed by following regular procedure required to be followed up for filling up the post. It is seen that the Tribunal has not considered any of these aspects while arriving at a conclusion that the respondents were appointed in permanent vacancy. Apparently, the conclusion is without any basis and cannot be sustained.

6. As regards second ground of challenge, however, as rightly observed by the Tribunal, there does not appear to be any evidence produced on behalf of petitioners to disclose that the posts were meant for reserved category candidate. My attention was sought to be drawn to the copy of advertisement issued by the management to fill up the posts in question. The said advertisement merely states that "B.C. candidate will be

preferred". That itself cannot lead to conclusion that the posts were meant for reserved category candidates.

7. As regards third ground of challenge, the petitioner is justified in contending that the new incumbents to the posts were necessary parties and inspite of the said fact was brought to the notice of the Tribunal, it clearly erred in issuing a direction for reinstatement of the respondents ignoring the prejudice which may cause to those incumbents. Since the fact of appointment of the new incumbents to the posts was brought to the notice of the Tribunal, it was necessary for the respondents-appellants before the Tribunal, to take appropriate steps to join said incumbents as the parties to the proceedings and having failed to do so, the order suffers from irregularity.

8. For the reasons stated above, therefore, the impugned orders cannot be sustained and are liable to be set aside. Petitions therefore succeed. The impugned orders are hereby set aside. Rule is made absolute in above terms. No order as to costs.

(R.M.S.KHANDEPARKAR, J.)